

HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WSOU INVESTMENTS LLC d/b/a BRAZOS
LICENSING AND DEVELOPMENT, a
Delaware limited liability company,

Plaintiff,

v.

F5 NETWORKS, INC., a Washington
Corporation,

Defendant.

No. 2:20-cv-01878-BJR
No. 2:21-cv-00123-BJR
No. 2:21-cv-00124-BJR
No. 2:21-cv-00125-BJR
No. 2:21-cv-00126-BJR

**JOINT MOTION TO MODIFY ORDER
SETTING TRIAL DATES AND
RELATED DATES**

Pursuant to LCR 16(b)(6), the parties, by and through their undersigned counsel, hereby respectfully seek to modify the Order Setting Trial Dates And Related Dates (Case No. 2:20-cv-01878-BJR, ECF No. 62). The parties' requested modifications and good cause therefore are identified below.

A. Basis for Proposed Modifications

First, under the current Order, the parties' deadline for exchanging expert reports regarding *Markman* issues are due June 1, 2021, before the parties have identified and exchanged terms for construction and proposed constructions. The parties' proposed modification below adjusts these expert disclosures to come after the parties' exchange of preliminary claim construction and extrinsic evidence, as is contemplated by the Local Patent Rules. *See* LPR 132. There is good

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1 cause for this adjustment because the parties need to have solidified the list of terms for
 2 construction and each party's position on those constructions before expert disclosures on the
 3 claim construction issues can be exchanged.

4 Second, the parties' proposed modifications phase discovery such that the claim
 5 construction proceedings are completed before the close of fact discovery, and expert discovery
 6 begins shortly after the close of fact discovery. This adjustment will allow the parties' experts
 7 addressing issues of infringement and validity, and non-infringement and invalidity, to have the
 8 full record of the respective positions on claim construction—and potentially the Court's order on
 9 constructions—before rendering their opinions. The parties' proposal also avoids overlapping
 10 deadlines for claim construction briefing and expert reports, which will address the technical and
 11 damages issues of five unrelated patents and four unique accused products.

12 The adjustments above—(1) moving expert disclosures to come after the parties' exchange
 13 of preliminary claim construction and extrinsic evidence, and (2) phasing discovery to provide
 14 sufficient time for expert reports after the completion of fact discovery on infringement and
 15 invalidity—adds approximately 10 weeks to the schedule before filing dispositive motions. The
 16 parties' proposed schedule proportionally moves the trial date to allow the Court sufficient time to
 17 consider dispositive motions before pretrial begins as provided in the Court's original scheduling
 18 order (approximately four months from the dispositive motion filing deadline to filing motions *in*
 19 *limine*).

20 **B. Proposed Revised Schedule**

21 The chart below identifies the parties' proposed revisions to the case schedule to account
 22 for the issues identified above:

Event	LPR	Scheduling Order (Dkt. 62)	Joint Modification Proposal
Preliminary infringement contentions and disclosure of asserted claims	LPR 120 (within 15 days of case schedule entry)	4/27/21	4/27/21 ¹
Deadline for joining additional parties		5/12/21	5/12/21
Deadline for filing amended pleadings		5/24/21	5/24/21
Disclosure of preliminary invalidity contentions and non-infringement contentions	LPR 121 (not later than 30 days of service of Disclosure of Asserted Claims and Infringement Contentions)	6/17/21	6/17/21
Document production accompanying invalidity contentions	LPR 122 (with the service of the Invalidity Contentions)	--	6/17/21
Proposed terms for construction	LPR 130 (within 20 days from service of Invalidity Contentions)	7/15/21	7/15/21
Preliminary claim chart [Exchange of Preliminary Claim Construction and Extrinsic Evidence]	LPR 131 (not later than 30 days after the exchange of Proposed Terms and Claim Elements for Construction)	8/19/21	8/19/21

¹ On April 8, 2021, Plaintiff WSOU Investments, LLC d/b/a Brazos Licensing and Development served its Disclosure of Asserted Claims and Infringement Contentions in each of the above-captioned cases pursuant to paragraph 4(B) of the Parties' Amended Joint Status Report and Discovery Plan filed on March 9, 2021 (Dkt. 60).

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Event	LPR	Scheduling Order (Dkt. 62)	Joint Modification Proposal
Joint claim chart and prehearing statement	LPR 132 (not later than 45 days after service of the Preliminary Claim Constructions)	9/30/21	9/30/21
Reports from expert witnesses regarding <i>Markman</i> issues due	LPR 132 (not later than 45 days after service of the Preliminary Claim Constructions)	6/1/21	9/30/21
Rebuttal expert reports regarding <i>Markman</i> issues due	LPR 132 and 26(a)(2)(D) (not later than 30 days after service of Expert Disclosure on Claim Construction)	6/16/21	10/28/21
Completion of claim construction discovery	LPR 133 (not later than 50 days after service of Joint Claim Construction and Prehearing Statement)	--	11/11/21
Opening claim construction briefs due	LPR 134 (not later than 55 days after service of Joint Claim Construction and Prehearing Statement)	10/25/21	11/23/21

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Event	LPR	Scheduling Order (Dkt. 62)	Joint Modification Proposal
Responsive claim construction briefs due	LPR 134 (not later than 15 days after service of Opening Claim Construction Brief)	11/8/21	12/2/21
<i>Markman</i> hearing	LPR 135 (as ordered by the Court)	12/22/21	12/22/21
Discovery completed by [Close of Fact Discovery]		12/8/21	1/6/22
Reports from expert witnesses under FRCP 26(a)(2) due [Opening Expert Reports]		11/8/21	2/3/22
Rebuttal Expert Reports		--	3/3/22
Close of Expert Discovery		--	3/17/22
All dispositive and <i>Daubert</i> motions must be filed by		1/7/22	4/7/22
Oppositions to dispositive and <i>Daubert</i> motions		--	4/28/22
Replies in support of dispositive and <i>Daubert</i> motions		--	5/12/22
All motions <i>in limine</i> must be filed by		5/2/22	8/1/22
Joint Pretrial Statement		5/9/22	8/8/22
Pretrial conference		5/23/22	8/22/22
JURY TRIAL DATE (7 day trial)		6/6/22	8/29/22

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C. Consolidated Case Schedule

The parties also request confirmation that the Court's schedule applies to all five cases identified below. (See Dkt. 60, Part 5.C.)

	Case Caption	Patent-in-Suit	Accused Product
1	<i>WSOU Investments, LLC d/b/a Brazos Licensing and Development v. F5 Networks, Inc.</i> , Case No. 2:21-cv-01878-BJR	U.S. Patent No. 7,953,884	BIG-IP Policy Enforcement Manager
2	<i>WSOU Investments, LLC d/b/a Brazos Licensing and Development v. F5 Networks, Inc.</i> , Case No. 2:21-cv-00123-BJR	U.S. Patent No. 7,860,000	BIG-IP Local Traffic Manager
3	<i>WSOU Investments, LLC d/b/a Brazos Licensing and Development v. F5 Networks, Inc.</i> , Case No. 2:21-cv-00124-BJR	U.S. Patent No. 9,584,330	BIG-IP Policy Enforcement Manager
4	<i>WSOU Investments, LLC d/b/a Brazos Licensing and Development v. F5 Networks, Inc.</i> , Case No. 2:21-cv-00125-BJR	U.S. Patent No. 8,248,940	BIG-IP Policy Enforcement Manager
5	<i>WSOU Investments, LLC d/b/a Brazos Licensing and Development v. F5 Networks, Inc.</i> , Case No. 2:21-cv-00126-BJR	U.S. Patent No. 7,548,945	BIG-IP DNS

DATED this 23rd day of April, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2021, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

s/ Christy A. Nelson
Christy A. Nelson

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